

Article 72.

Selecting and Impaneling the Jury.

**§ 15A-1211. Selection procedure generally; role of judge; challenge to the panel; authority of judge to excuse jurors.**

(a) The provisions of Chapter 9 of the General Statutes, Jurors, pertinent to criminal cases apply except when this Chapter specifically provides a different procedure.

(b) The trial judge must decide all challenges to the panel and all questions concerning the competency of jurors.

(c) The State or the defendant may challenge the jury panel. A challenge to the panel:

- (1) May be made only on the ground that the jurors were not selected or drawn according to law.
- (2) Must be in writing.
- (3) Must specify the facts constituting the ground of challenge.
- (4) Must be made and decided before any juror is examined.

If a challenge to the panel is sustained, the judge must discharge the panel.

(d) The judge may excuse a juror without challenge by any party if he determines that grounds for challenge for cause are present. (1977, c. 711, s. 1.)

**§ 15A-1212. Grounds for challenge for cause.**

A challenge for cause to an individual juror may be made by any party on the ground that the juror:

- (1) Does not have the qualifications required by G.S. 9-3.
- (2) Is incapable by reason of mental or physical infirmity of rendering jury service.
- (3) Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
- (4) Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
- (5) Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
- (6) Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
- (7) Is presently charged with a felony.
- (8) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.
- (9) For any other cause is unable to render a fair and impartial verdict. (1977, c. 711, s. 1.)

**§ 15A-1213. Informing prospective jurors of case.**

Prior to selection of jurors, the judge must identify the parties and their counsel and briefly inform the prospective jurors, as to each defendant, of the charge, the date of the alleged offense, the name of any victim alleged in the pleading, the defendant's plea to the charge, and any

affirmative defense of which the defendant has given pretrial notice as required by Article 52, Motions Practice. The judge may not read the pleadings to the jury. (1977, c. 711, s. 1.)

**§ 15A-1214. Selection of jurors; procedure.**

(a) The clerk, under the supervision of the presiding judge, must call jurors from the panel by a system of random selection which precludes advance knowledge of the identity of the next juror to be called. When a juror is called and he is assigned to the jury box, he retains the seat assigned until excused.

(b) The judge must inform the prospective jurors of the case in accordance with G.S. 15A-1213. He may briefly question prospective jurors individually or as a group concerning general fitness and competency to determine whether there is cause why they should not serve as jurors in the case.

(c) The prosecutor and the defense counsel, or the defendant if not represented by counsel, may personally question prospective jurors individually concerning their fitness and competency to serve as jurors in the case to determine whether there is a basis for a challenge for cause or whether to exercise a peremptory challenge. The prosecution or defense is not foreclosed from asking a question merely because the court has previously asked the same or similar question.

(d) The prosecutor must conduct his examination of the first 12 jurors seated and make his challenges for cause and exercise his peremptory challenges. If the judge allows a challenge for cause, or if a peremptory challenge is exercised, the clerk must immediately call a replacement into the box. When the prosecutor is satisfied with the 12 in the box, they must then be tendered to the defendant. Until the prosecutor indicates his satisfaction, he may make a challenge for cause or exercise a peremptory challenge to strike any juror, whether an original or replacement juror.

(e) Each defendant must then conduct his examination of the jurors tendered him, making his challenges for cause and his peremptory challenges. If a juror is excused, no replacement may be called until all defendants have indicated satisfaction with those remaining, at which time the clerk must call replacements for the jurors excused. The judge in his discretion must determine order of examination among multiple defendants.

(f) Upon the calling of replacement jurors, the prosecutor must examine the replacement jurors and indicate satisfaction with a completed panel of 12 before the replacement jurors are tendered to a defendant. Only replacement jurors may be examined and challenged. This procedure is repeated until all parties have accepted 12 jurors.

(g) If at any time after a juror has been accepted by a party, and before the jury is impaneled, it is discovered that the juror has made an incorrect statement during voir dire or that some other good reason exists:

- (1) The judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for challenge for cause.
- (2) If the judge determines there is a basis for challenge for cause, he must excuse the juror or sustain any challenge for cause that has been made.
- (3) If the judge determines there is no basis for challenge for cause, any party who has not exhausted his peremptory challenges may challenge the juror.

Any replacement juror called is subject to examination, challenge for cause, and peremptory challenge as any other unaccepted juror.

(h) In order for a defendant to seek reversal of the case on appeal on the ground that the judge refused to allow a challenge made for cause, he must have:

- (1) Exhausted the peremptory challenges available to him;

- (2) Renewed his challenge as provided in subsection (i) of this section; and
- (3) Had his renewal motion denied as to the juror in question.
- (i) A party who has exhausted his peremptory challenges may move orally or in writing to renew a challenge for cause previously denied if the party either:
  - (1) Had peremptorily challenged the juror; or
  - (2) States in the motion that he would have challenged that juror peremptorily had his challenges not been exhausted.

The judge may reconsider his denial of the challenge for cause, reconsidering facts and arguments previously adduced or taking cognizance of additional facts and arguments presented. If upon reconsideration the judge determines that the juror should have been excused for cause, he must allow the party an additional peremptory challenge.

(j) In capital cases the trial judge for good cause shown may direct that jurors be selected one at a time, in which case each juror must first be passed by the State. These jurors may be sequestered before and after selection. (1977, c. 711, s. 1.)

#### **§ 15A-1215. Alternate jurors.**

(a) The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. If before final submission of the case to the jury, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. Alternate jurors receive the same compensation as other jurors and, unless they become jurors, must be discharged upon the final submission of the case to the jury.

(b) In all criminal actions in which one or more defendants is to be tried for a capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall provide for the selection of at least two alternate jurors, or more as he deems appropriate. The alternate jurors shall be retained during the deliberations of the jury on the issue of guilt or innocence under such restrictions, regulations and instructions as the presiding judge shall direct. In case of sequestration of a jury during deliberations in a capital case, alternates shall be sequestered in the same manner as is the trial jury, but such alternates shall also be sequestered from the trial jury. In no event shall more than 12 jurors participate in the jury's deliberations. (1977, c. 711, s. 1; 1979, c. 711, s. 1.)

#### **§ 15A-1216. Impaneling jury.**

After all jurors, including alternate jurors, have been selected, the clerk impanels the jury by instructing them as follows: "Members of the jury, you have been sworn and are now impaneled to try the issue in the case of State of North Carolina versus \_\_\_\_\_. You will sit together, hear the evidence, and render your verdict accordingly." (1977, c. 711, s. 1.)

#### **§ 15A-1217. Number of peremptory challenges.**

- (a) Capital cases.
  - (1) Each defendant is allowed 14 challenges.
  - (2) The State is allowed 14 challenges for each defendant.
- (b) Noncapital cases.
  - (1) Each defendant is allowed six challenges.

- (2) The State is allowed six challenges for each defendant.
- (c) Each party is entitled to one peremptory challenge for each alternate juror in addition to any unused challenges. (1977, c. 711, s. 1.)

**§§ 15A-1218 through 15A-1220. Reserved for future codification purposes.**